IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 351 of 1995

DOLA RAM

V/S

STATE & ORS

Mr. SANJEEV SHARMA, for the appellant / petitioner

Mr. OP BOOB, A.G.A., for the respondent

Date of Order : 6.4.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

By this petition, the petitioner seeks to challenge the order Annexure-4 dt. 30.9.1994, passed by the Chief Engineer, allowing the appeal, and setting aside the orders of the Executive Engineer/Superintending Engineer.

The case of the petitioner is, that he applied for change of his irrigation facility from Chak no. 2 SDS to Chak no. 4 SDS, because his other lands were there in Chak no. 4 SDS, as the water level of supply in Chak no. 2 SDS was lower than the level of the land, on account of which he was not getting proper water, and since the water level in Chak no. 4 SDS is higher, he would get better facility. His application was allowed by the Executive Engineer vide order passed on 22.12.88, against which appeal was filed by Om Prakash, Sahab Ram, Narayan, Banwari Lal, Jagdish, Madhoa Singh, Manphool, Mahanga Singh, Chani and Makhan Singh, which was registered by the Superintending Engineer

as Appeal No. 14/89, and in that appeal the main objection raised was, that by effecting this change their right of irrigation would be adversely affected, size of the outlet would not be increased, and that in the outlet Stone No. 67/121 in Chak no. 4 SDS 'Aad' has been sanctioned in Kila no. 5, 6, 15, 25 in the area of Mahanga Singh, while Mahanga Singh objected that he would not allow his land to be used as 'Aad'. On the other hand, the contention of the present petitioner in that appeal was, that his land falls in Killa no. 5, 6, 7, 14, 15, and for its irrigation 'Aad' already exist in Killa no. 16 and 25 of Mahanga Singh, which is being used by the present petitioner, and no water course has been sanctioned, and therefore, he would avail the changed irrigation facility from outlet at Stone no. 67/122, and it was prayed that the appeal be dismissed, and the learned Superintending Engineer in his order dt. 20.9.89 (Annexure-2) had found, that by effecting change, it results into consolidation of Dola Ram's land, and would provide better irrigation facility, and since the appellants are not prepared to provide water course through their lands, therefore, the land which would be used from out of Kila no. 16 and 25 of Stone no. 67/121, he is to be paid compensation, therefore, the file was remanded to the Executive Engineer, with a direction to acquire the land, pay the compensation to Mahanga Singh, and sanction the water course. Accordingly, the Executive Engineer considered the matter and addressed a communication to the Superintending Engineer, reporting that the change of

irrigation was ordered on the condition that he will obtain water from the water course already existing being 67/122, and will use the existing 'Aad'. Still against that order in appeal vide order dt. 20.9.89, order has been passed for sanctioning water course. In this regard again it was reported, that Dola Ram's turn of irrigation may be fixed in Chak no. 4 SDS, in the existing 'Aad'. Considering this Superintending Engineer accepting the recommendations of the Executive Engineer, and ordered that Dola Ram be sanctioned water supply for his 12 bighas of land in question in Chak no. 4 SDS, outlet Stone no. 67/122, by using existing 'Aad', whereby he is irrigating his 8 bighas of land, and it was further directed, that in accordance with the directions given vide order dt. 20.9.89, action may be taken for the sanction of water course. This is the order dt. 9.11.89, produced in the writ petition as Annexure-3. Challenging these Annexure-2 and 3, two appeals were filed before the Chief Engineer, by two sets of appellants, and they have been allowed by the impugned order as above.

Having heard learned counsel for the petitioner and the State, as nobody has appeared for Mahanga Singh despite service, in my view, the order Annexure-4 cannot be sustained, inasmuch as, all that had been done by Annexure-2 and 3 was, that the petitioner was sanctioned transfer of irrigation right from Chak no. 2 SDS to Chak no. 4 SDS, and was allowed to receive water from the outlet Stone no.

67/122, from which he was already taking water for irrigation of his other lands, and even regarding 'Aad', it was clearly directed that he would use the existing 'Aad', which was already existing in Kila no. 16 and 25, from which he was irrigating his other 8 bighas of land. In that view of the matter there was no occasion for interfering with the orders Annexure- 2 and 3. This is one aspect of the matter.

The other important aspect of the matter is, that a look at Annexure-4 shows, that it is a wholly non speaking order, as it only catalogues submissions made by the either side, and only holds, that from the file it transpires that Executive Engineer vide his letter dt. 22.6.1988 has directed that Dola Ram be asked as to why does he not include his area in Chak no. 2 SDS, which would eliminate the requirement of proposed water course, and then it has been held, that this appears to be appropriate. In my view, in view of the reasons given in, and the factual matrix considered in, Annexure-2 and 3, this type of casual approach to the matter, without comprehending the merits of the case, cannot be countenanced.

Thus, considering the case from any standpoint I do not find the order Annexure-4 to be sustainable.

Consequently, the writ petition is allowed. The order Annexure-4 is quashed.

(N P GUPTA),J.

/Sushil/